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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DARWIN BOGGS,
Plaintiff,
vs.

HECTOR MANUEL D/B/A
ALBERTACOS MEXICAN FOOD;
GEORGE KRITIKOS, AS TRUSTEE OF
THE KRITIKOS FAMILY TRUST; and
DOES 1 to 10,
Defendants.

Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR DENIAL
OF CIVIL RIGHTS OF A DISABLED
PERSON IN VIOLATIONS OF

1. AMERICANS WITH DISABILITIES
ACT, 42 U.S.C. §12131 et seq.;
2. CALIFORNIA'S UNRUH CIVIL
RIGHTS ACT;
3. CALIFORNIA'S DISABLED
PERSONS ACT;
4. CALIFORNIA HEALTH & SAFETY
CODE;
5. NEGLIGENCE

Plaintiff DARWIN BOGGS ("Plaintiff") complains of Defendants HECTOR
MANUEL D/B/A ALBERTACOS MEXICAN FOOD; GEORGE KRITIKOS, AS
TRUSTEE OF THE KRITIKOS FAMILY TRUST; and DOES 1 to 10 ("Defendants")
and alleges as follows:

PARTIES

1
2 1. Plaintiff is a California resident with a physical disability. Plaintiff suffers
3 from paraplegia and is substantially limited in his ability to walk. Plaintiff requires the
4 use of a wheelchair at all times when traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,
6 business operators, lessors and/or lessees of the real property for a restaurant
7 (“Business”) located at or about 4000 N. Sierra Way, San Bernardino, California.

8 3. The true names and capacities, whether individual, corporate, associate or
9 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,
10 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
11 Court to amend this Complaint when the true names and capacities have been
12 ascertained. Plaintiff is informed and believes, and, based thereon, alleges that each such
13 fictitiously named Defendants are responsible in some manner, and therefore, liable to
14 Plaintiff for the acts herein alleged.

15 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
16 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
17 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
18 the things alleged herein was acting with the knowledge and consent of the other
19 Defendants and within the course and scope of such agency or employment relationship.

20 5. Whenever and wherever reference is made in this Complaint to any act or
21 failure to act by a defendant or Defendants, such allegations and references shall also be
22 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
23 and severally.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
26 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
27 *seq.*).
28

- 1 a. A failure to make reasonable modification in policies, practices, or
2 procedures, when such modifications are necessary to afford such
3 goods, services, facilities, privileges, advantages, or accommodations
4 to individuals with disabilities, unless the entity can demonstrate that
5 making such modifications would fundamentally alter the nature of
6 such goods, services, facilities, privileges, advantages, or
7 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8 b. A failure to take such steps as may be necessary to ensure that no
9 individual with a disability is excluded, denied services, segregated or
10 otherwise treated differently than other individuals because of the
11 absence of auxiliary aids and services, unless the entity can
12 demonstrate that taking such steps would fundamentally alter the
13 nature of the good, service, facility, privilege, advantage, or
14 accommodation being offered or would result in an undue burden. 42
15 U.S.C. § 12182(b)(2)(A)(iii).
- 16 c. A failure to remove architectural barriers, and communication barriers
17 that are structural in nature, in existing facilities, and transportation
18 barriers in existing vehicles and rail passenger cars used by an
19 establishment for transporting individuals (not including barriers that
20 can only be removed through the retrofitting of vehicles or rail
21 passenger cars by the installation of a hydraulic or other lift), where
22 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- 23 d. A failure to make alterations in such a manner that, to the maximum
24 extent feasible, the altered portions of the facility are readily
25 accessible to and usable by individuals with disabilities, including
26 individuals who use wheelchairs or to ensure that, to the maximum
27 extent feasible, the path of travel to the altered area and the
28 bathrooms, telephones, and drinking fountains serving the altered

1 area, are readily accessible to and usable by individuals with
2 disabilities where such alterations to the path or travel or the
3 bathrooms, telephones, and drinking fountains serving the altered area
4 are not disproportionate to the overall alterations in terms of cost and
5 scope. 42 U.S.C. § 12183(a)(2).

6 21. Where parking spaces are provided, accessible parking spaces shall be
7 provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every
8 eight accessible spaces, but not less than one, shall be served by an access aisle 96 in
9 (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA
10 Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall
11 be a van accessible parking space. 2010 ADA Standards § 208.2.4.

12 22. At least one accessible route shall connect accessible building, facilities,
13 elements, and spaces that are on the same site. 1991 ADA Standards § 4.3.2. A public
14 accommodation shall maintain in operable working condition those features of facilities
15 and equipment that are required to be readily accessible to and usable by persons with
16 disabilities by the Act or this part. 28 C.F.R. 35.211(a).

17 23. Here, Defendants failed to provide an access aisle with level surface slope,
18 as there was a rain gutter within the boundaries of both the van accessible aisle and the
19 parking stall, creating an uneven surface.

20 24. Under the 1991 Standards, parking spaces and access aisles must be level
21 with surface slopes not exceeding 1:50 (2%) in all directions. 1991 Standards § 4.6.2.
22 Accessible parking spaces shall be at least 96 in (2440 mm) wide. Parking access aisles
23 shall be part of an accessible route to the building or facility entrance and shall comply
24 with 4.3. Two accessible parking spaces may share a common access aisle. Parked
25 vehicle overhangs shall not reduce the clear width of an accessible route. Parking spaces
26 and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all
27 directions. 1991 Standards § 4.6.3.

1 for each and every offense for the actual damages, and any amount that may be
 2 determined by a jury, or a court sitting without a jury, up to a maximum of three times the
 3 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any
 4 attorney's fees that may be determined by the court in addition thereto, suffered by any
 5 person denied the rights provided in Section 51, 51.5, or 51.6.

6 32. California Civil Code § 51(f) specifies, "a violation of the right of any
 7 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)
 8 shall also constitute a violation of this section."

9 33. The actions and omissions of Defendants alleged herein constitute a denial
 10 of full and equal accommodation, advantages, facilities, privileges, or services by
 11 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.
 12 Defendants have discriminated against Plaintiff in violation of California Civil Code §§
 13 51 and 52.

14 34. The violations of the Unruh Civil Rights Act caused Plaintiff to experience
 15 difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory
 16 damages as specified in California Civil Code §55.56(a)-(c).

17 **THIRD CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

19 35. Plaintiff incorporates by reference each of the allegations in all prior
 20 paragraphs in this complaint.

21 36. California Civil Code § 54.1(a) states, "Individuals with disabilities shall be
 22 entitled to full and equal access, as other members of the general public, to
 23 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,
 24 and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles,
 25 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes
 26 of transportation (whether private, public, franchised, licensed, contracted, or otherwise
 27 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,
 28 places of public accommodations, amusement, or resort, and other places in which the

1 general public is invited, subject only to the conditions and limitations established by
2 law, or state or federal regulation, and applicable alike to all persons.

3 37. California Civil Code § 54.3(a) states, “Any person or persons, firm or
4 corporation who denies or interferes with admittance to or enjoyment of public facilities
5 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an
6 individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for
7 the actual damages, and any amount as may be determined by a jury, or a court sitting
8 without a jury, up to a maximum of three times the amount of actual damages but in no
9 case less than one thousand dollars (\$1,000) and any attorney’s fees that may be
10 determined by the court in addition thereto, suffered by any person denied the rights
11 provided in Section 54, 54.1, and 54.2.

12 38. California Civil Code § 54(d) specifies, “a violation of the right of an
13 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also
14 constitute a violation of this section, and nothing in this section shall be construed to limit
15 the access of any person in violation of that act.

16 39. The actions and omissions of Defendants alleged herein constitute a denial
17 of full and equal accommodation, advantages, and facilities by physically disabled
18 persons within the meaning of California Civil Code § 54. Defendants have
19 discriminated against Plaintiff in violation of California Civil Code § 54.

20 40. The violations of the California Disabled Persons Act caused Plaintiff to
21 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for
22 statutory damages as specified in California Civil Code §55.56(a)-(c).

23 **FOURTH CAUSE OF ACTION**

24 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

25 41. Plaintiff incorporates by reference each of the allegations in all prior
26 paragraphs in this complaint.

27 42. Plaintiff and other similar physically disabled persons who require the use of
28 a wheelchair are unable to use public facilities on a “full and equal” basis unless each

1 such facility is in compliance with the provisions of California Health & Safety Code §
2 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
3 provisions of California Health & Safety Code § 19955 et seq.

4 43. The purpose of California Health & Safety Code § 1995 et seq. is to ensure
5 that public accommodations or facilities constructed in this state with private funds
6 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
7 Title 1 of the Government Code. The code relating to such public accommodations also
8 require that “when sanitary facilities are made available for the public, clients, or
9 employees in these stations, centers, or buildings, they shall be made available for
10 persons with disabilities.

11 44. Title II of the ADA holds as a “general rule” that no individual shall be
12 discriminated against on the basis of disability in the full and equal enjoyment of goods
13 (or use), services, facilities, privileges, and accommodations offered by any person who
14 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
15 Further, each and every violation of the ADA also constitutes a separate and distinct
16 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
17 award of damages and injunctive relief pursuant to California law, including but not
18 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

19 **FIFTH CAUSE OF ACTION**

20 **NEGLIGENCE**

21 45. Plaintiff incorporates by reference each of the allegations in all prior
22 paragraphs in this complaint.

23 46. Defendants have a general duty and a duty under the ADA, Unruh Civil
24 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
25 to the Plaintiff.

26 47. Defendants breached their duty of care by violating the provisions of ADA,
27 Unruh Civil Rights Act and California Disabled Persons Act.

